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In the Supreme Court of the United States

OCTOBER TERM, 1949

No. 525

ORIN C. CLEMENT, PETITIONER

vs.

TIGHE E. WOODS, HOUSING EXPEDITER, OFFICE OF THE HOUSING EXPEDITER

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

OPINIONS BELOW

The opinion of the District Court has not been published but is contained in the Record (R. 54-69). The opinion of the Court of Appeals (R. 89) is published in 177 F. 2d 376.

JURISDICTION

The judgment of the Court of Appeals was entered on October 20, 1949 (R. 89). The petition for a writ of certiorari was filed on January 3, 1950. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTIONS PRESENTED

Whether the court below properly held (1) that the findings of fact of the District Court, that petitioner resorted to "contracts of purchase" as a means of evading the maximum rent ceilings established by the Act and Rent Regulation, are amply sustained by the record, and (2) that the District Court did not abuse its discretion in issuing a temporary injunction under Section 206(b) of the Housing and Rent Act of 1947, as amended.

STATUTE AND REGULATION INVOLVED

The pertinent provisions of the Housing and Rent Act of 1947, as amended (50 U.S.C. App., Supp. II, 1881 *et seq.*), and the Controlled Housing Rent Regulation (12 F.R. 4331) are set forth in the Appendix, *infra,* pp. 12-16.

STATEMENT

Petitioner is the owner of housing accommodations located in Toledo, Ohio. This action was brought by the Housing Expediter to enjoin petitioner, pursuant to Section 206(b) of the Housing and Rent Act of 1947, as amended, from violating the Act and for restitution of alleged overcharges (R. 2-5). Simultaneously, with the filing of the complaint, the Housing Expediter applied for a temporary injunction restraining petitioner from collecting rent in excess of the maximum rent established by the Act and the regulations, and from violating the Act in any other manner (R. 6-9). Petitioner's answer denied the charges of vio-

lation; asserted the court lacked jurisdiction; and claimed in substance that he was not renting the housing accommodations involved herein, but rather had sold them, and that the persons who presently occupied them, did so under "contracts of purchase" (R. 10-15).

The application for a temporary injunction came on for hearing before the District Court. At this hearing, the Housing Expediter offered the testimony of six of the alleged purchasers (R. 23-53), summarized in part in the opinion of the District Court (R. 63-64). Petitioner did not take the stand nor call witnesses in his behalf, but cross-examined plaintiff's witnesses. At the conclusion of the hearing, the trial court held "that the contracts entered into were not entered into in good faith by the [defendant]" but "were entered into for the purpose of receiving a $200 down payment wholly above and beyond the rental ceilings provided, and of receiving thereafter monthly payments wholly above and beyond the fixed rental ceilings * * * in violation of the law" (R. 65-66).

The court entered findings of fact and conclusions of law (R. 76-78), in which it found that petitioner was the landlord of the housing accommodations in question, situated in the Toledo, Ohio. Defense-Rental Area (Paragraphs 5-6, R. 76); that petitioner had entered into contracts of sale with six different persons involved in the case, "all

of which contracts were not entered into in good faith" (Paragraph 7, R. 77); that the persons named, except one George Sfaelos, were personally occupying the accommodations as tenants, and the monthly payments being made by them to petitioner constituted rent (Paragraph 8, R. 77); that petitioner had violated the Act and Section 825.8 of the Controlled Housing Rent Regulation, its evasion provisions (Paragraph 9, R. 77); and that he had received and was receiving money from the several tenants named in excess of the maximum legal rent allowed by the Act and the Rent Regulation (Paragraph 11, R. 77). Based upon these findings, the court likewise concluded that it had jurisdiction of the parties and of the subject matter (Paragraph 1, R. 77); that the Act prohibited collection of rent in excess of the maximum rents (Paragraph 2, R. 78); and that petitioner should be temporarily enjoined from receiving unlawful rents and from adopting any scheme for evading the Act and the Rent Regulation. The District Court thereupon entered an order of preliminary injunction to that effect (R. 79).

Upon appeal, the Court of Appeals affirmed upon the ground that the findings of fact of the District Court "are amply sustained by the record, and that the discretion of the District Court was not improvidently exercised in the issuance of the temporary injunction complained of" (R. 89).

ARGUMENT

The decision of the court below is correct and there is no conflict of decisions. The questions which petitioner seeks to raise are either firmly settled by the decided cases or of no general importance; they consist largely of issues of fact which have been resolved against him by the concurrent findings of the two lower courts.

1. The record contains no support whatever for petitioner's assertion that the rulings below have "placed in jeopardy every existing contract for the sale of housing accommodations * * * and if allowed to stand unreversed is an invitation to thousands of purchasers under contract to seek to escape from their contracts * * *." (Pet. 11). The ruling below is limited solely to the specific and novel facts and circumstances of the instant case.

The Housing and Rent Act of 1947 fixed maximum rents in those defense-rental areas which on March 1, 1947, were under rent control pursuant to the Emergency Price Control Act of 1942 (50 U.S.C. App. 901 *et seq.*). Such rents were to be the O.P.A. maximum rents which were in effect on June 30, 1947, and the Act forbade the demand for, or receipt of, rents in excess thereof (Section 204(b) 50 U.S.C. App., Supp. II, 1894 (b)). Pursuant to Section 204(d) of the Act, which authorized the issuance of regulations and orders deemed necessary to carry out the provisions of the Act, the Housing Expediter issued the

Rent Regulation, which among other things declared that the maximum rents shall not be evaded either directly or indirectly "by way of absolute or conditional sale, sale with purchase money or other form of mortgage, or sale with option to repurchase * * * or by tying agreement, or otherwise" (Sec. 825.8(a), *infra,* p. 16).

The main question before the District Court was one of fact, viz: were the alleged contracts of sale employed by petitioner merely a device to evade the maximum rent provisions of the Act and the Regulation. The court in a comprehensive opinion which carefully reviewed the contract of sale and the testimony in the case (R. 54-69) found as a fact that petitioner's contracts "were not entered into in good faith;" that petitioner was actually the landlord of the premises in question; that the persons named were occupying the accommodations as tenants; that the monthly payments being made by them to petitioner constituted rent; and that petitioner had violated the Act and Section 825.8 of the Regulation in receiving from the tenants money in excess of the maximum legal rent (R. 76-77). Petitioner concedes that "there is no dispute in the evidence" (Pet. 8), and the Court of Appeals held that the findings of fact of the District Court are "amply sustained by the record" (R. 89). These findings of fact by the District Court, concurred in by the Court of Appeals, are normally unassailable here. *Virginian Ry.* v. *Federation,* 300 U. S. 515; *Alabama Power Company* v. *Ickes,*

302 U. S. 464, 477; *United States* v. *O'Donnell,* 303 U. S. 501; *Allen* v. *Trust Co.,* 326 U. S. 630, *Comstock* v. *Group of Investors,* 335 U. S. 211, 213-214.

Petitioner urges, however, that "it seems incredible that a finding of evasion could be reached" (Pet. 14). The short answer to this contention, at this stage, is that this was a question of fact for the trial court, and where that court has found evasion to be present, and its finding has been concurred in by the Court of Appeals, the conclusion so reached "will be accepted here without reexamination of the evidence" (*Allen* v. *Trust Company,* 326 U. S. at 636). No "very exceptional showing of error" is attempted, or could be made, as the District Court's opinion suffices to prove (R. 54-69).[1]

In particular, the attempt to rely upon the form of sale[2] does not help petitioner, since the trial court found as a fact that a landlord-tenant rela-

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[1] Moreover, the burden of showing error in findings supporting a preliminary injunction, as is the case here, is particularly heavy. Cf. *Alabama* v. *United States,* 279 U. S. 229, 231.

[2] The sham character of the so-called contract of sale may be illustrated by the fact that one purchaser, Duffy, was already in default (R. 46). By the terms of the sales contract, at any time, petitioner could void the contract as to Duffy, whether he continued to pay or not (Par. 8, R. 59). If Duffy continued to pay for ten years, and petitioner then exercised his rights under the contract and rescinded, all other purchasers, even though paid up, could not get title to the premises, since the contract by its terms provided that title would not be delivered until (1) all the payments had been made by the purchaser, and (2) all the payments had been made by all the others (Par. 6, R. 57).

It should also be noted that petitioner advertised the housing accommodations in a newspaper under the heading "Apartments for Rent Unfurnished" (R. 24, 55).

tionship was created in each instance (R. 76-77). "Mere words and ingenuity of contractual expression, whatever their effect between the parties, cannot by description make permissible a course of conduct forbidden by law." *United States* v. *San Francisco,* 310 U.S. 16, 28; see, too, *United States* v. *Masonite Corp.,* 316 U.S. 265, 281.

2. As for the contention that the written contracts for the sale of units in petitioner's apartment building conform to the laws of Ohio, and were enforceable contracts for an interest in real estate in Ohio, that fact, if it be a fact, is not decisive in this proceeding. Although the incidents of title may be governed by state law, the meaning and application of the Housing and Rent Act and the regulations issued thereunder are controlled by federal law. *Schwabacher* v. *United States,* 334 U.S. 182, 188-189; *National Labor Relations Board* v. *Hearst Publications,* 322 U.S. 111, 123; *Case* v. *Bowles,* 327 U.S. 92; *Woods* v. *Petchell,* 175 F. 2d 202 (C.A. 8); *Woods* v. *Krizan,* 176 F. 2d 667 (C.A. 8). The District Court could properly find that these agreements were sham, not consummated in good faith, and constituted an evasion of the federal Act, even though they were technically valid under state law.

3. Petitioner also argues that the particular units involved in this case had been withdrawn from the rental market, the old tenants had vacated, the apartments were without occupants, and that

therefore he was without any duty under the Housing and Rent Act. It is true that petitioner had the right, under Section 302 (*infra,* p. 15), not to offer his accommodations for rent, after the earlier tenants had moved out, and that the accommodations were not subject to the Rent Regulation except as rented units. It is also true that petitioner could have sold the accommodations after the tenants in occupancy had vacated. But once petitioner re-offered the housing accommodations upon the rental market, they again became subject to the Act and the Regulation. This is what the lower courts have found to be the case. Obviously, petitioner could not in the guise of a sale continue to rent the housing units at rentals in excess of the legal maximum.

4. Petitioner also seems to think that the present action was brought under Section 209 of the Act of 1947, prior to its amendment in 1949 (*infra,* pp. 14-15), dealing with eviction proceedings instituted for possession of accommodations, and that since this is an action not for possession but to restrain petitioner from charging more than the lawful rent, Section 209 is not applicable. Petitioner misconstrues the basis for the jurisdiction conferred upon the court in this case. The action is brought under Section 206(b) of the Act (*infra,* p. 14) to restrain further violations on the part of petitioner in demanding and receiving more than the estab-

lished lawful rent. The right of the District Court to enjoin such violations under Section 206(b) of the Act is now beyond dispute, and the plain words of that section, coupled with Section 206(a) (*infra*, pp. 13-14), leave no room for argument on that score.

5. Finally, it is contended that if the Rent Regulation can be construed to mean that contracts for the sale of controlled housing units "legal and enforcible on their face, constitute evasion of the Act and the Regulations, and prevent the owner from disposing of his property, then the Act and the Regulations do violence to the 5th and 14th amendments to the Constitution of the United States, as well as to Article 1, Section 1, of the Constitution of the State of Ohio." (Pet. 18). But it is plain that no constitutional rights were offended in this case. If, as the trial court found, the proposed sales of housing accommodations were, in fact, rentals of housing accommodations, then petitioner, like other landlords subject to the Act, could charge no more than the lawful rental for the accommodations. Prohibitions of the evasion of this duty are clearly valid, and follow from the lawfulness of the maximum rent restriction upon the use of rental property in a period of emergency. *Woods* v. *Miller Co.*, 333 U.S. 138; *United States* v. *Shoreline Cooperative Apartments, Inc.*, this Term, No. 334; *Bowles* v. *Willingham*, 321 U. S. 503.

CONCLUSION

The decision of the Court below is clearly right and does not involve any question of substantial importance. There is no conflict of decisions and further review is not warranted. The petition for a writ of certiorari should, therefore, be denied.

Respectfully submitted.

PHILIP B. PERLMAN,
Solicitor General.

ED DUPREE,
General Counsel,
A. M. EDWARDS, JR.,
Acting Assistant General Counsel,
NATHAN SIEGEL,
FRANCIS X. RILEY,
Special Litigation Attorneys,
Office of the Housing Expediter.

FEBRUARY, 1950.

APPENDIX

1. The pertinent provisions of the Housing and Rent Act of 1947, 61 Stat. 193, 50 U.S.C. App., Supp. II, 1881 *et. seq.*, as amended by Public Law 422, 80th Cong., 2d Sess., approved February 27, 1948, Public Law 464, 80th Cong., 2d Sess., approved March 30, 1948, and Public Law 31, 81st Cong., 1st Sess., approved March 30, 1949) are as follows:

* * * * *

SEC. 204. (a) The Housing Expediter shall administer the powers, functions, and duties under this title; and for the purpose of exercising such powers, functions, and duties, and the powers, functions, and duties granted to or imposed upon the Housing Expediter by title I of this Act, the Office of Housing Expediter is hereby extended until the close of June 30, 1950.

(b) (1) Subject to the provisions of paragraphs (2) and (3) of this subsection, and subsections (h) and (i), during the period beginning on the effective date of this title and ending on the date this title ceases to be in effect, no person shall demand, accept, or receive any rent for the use or occupancy of any controlled housing accommodations greater than the maximum rent established under the authority of the Emergency Price Control Act of 1942, as amended, and in effect with respect thereto on June 30, 1947: * * *

(d) The Housing Expediter is authorized to issue such regulations and orders, consistent with the provisions of this title, as he may deem necessary

to carry out the provisions of this section and section 202 (c).

* * * * *

SEC. 206.[3] (a). It shall be unlawful for any person to demand, accept or receive any rent for the use or occupancy of any controlled housing accommodations in excess of the maximum rent pre-

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[3] This section was amended by section 205, Public Law 31, 81st Congress, to read as provided above. Prior to such amendment and as amended by section 203, Public Law 464, 80th Congress, this section read as follows:

"SEC. 206. (a) It shall be unlawful for any person to offer, solicit, demand, accept, or receive any rent for the use or occupancy of any controlled housing accommodations in excess of the maximum rent prescribed under section 204 or otherwise to do or omit to do any act in violation of any provision of this title.

"(b) Whenever in the judgment of the Housing Expediter any person has engaged or is about to engage in any act or practice which constitutes or will constitute a violation of any provision of this title, he may make application to any Federal, State, or Territorial court of competent jurisdiction, for an order enjoining such act or practice, or for an order enforcing compliance with such provision, and upon a showing by the Housing Expediter that such person has engaged or is about to engage in any such act or practice a permanent or temporary injunction, restraining order, or other order shall be granted without bond."

The original section read as follows:

"SEC. 206. (a) It shall be unlawful for any person to offer, solicit, demand, accept, or receive any rent for the use or occupancy of any controlled housing accommodations in excess of the maximum rent prescribed under section 204.

"(b) Whenever in the judgment of the Housing Expediter any person has engaged or is about to engage in any act or practice which constitutes or will constitute a violation of subsection (a) of this section, he may make application to any Federal, State or Territorial court of competent jurisdiction, for an order enjoining such act or practice, or for an order enforcing compliance with such subsection, and upon a showing by the Housing Expediter that such person has engaged or is about to engage in any such act or practice a permanent or temporary injunction, restraining order, or other order shall be granted without bond."

scribed under section 204, or otherwise to do or omit to do any act, in violation of this Act, or of any regulation or order or requirement under this Act, or to offer, solicit, attempt, or agree to do any of the foregoing.

(b) Whenever in the judgment of the Housing Expediter any person has engaged or is about to engage in any acts or practices which constitute or will constitute a violation of any provision of this Act, or any regulation or order issued thereunder, the United States may make application to any Federal, State, or Territorial court of competent jurisdiction for an order enjoining such acts or practices, or for an order enforcing compliance with such provision, and upon a showing that such person has engaged or is about to engage in any such acts or practices a permanent or temporary injunction, restraining order, or other order shall be granted without bond.

* * * * *

SEC. 209.[4] Whenever in the judgment of the Housing Expediter such action is necessary or proper in

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[4] This section was amended by section 206, Public Law 31, 81st Congress, to read as provided above. Prior to such amendment and as amended by section 204, Public Law 464, 80th Congress, this section read, in part, as follows:

"SEC. 209. (a) No action or proceeding to recover possession of any controlled housing accommodations with respect to which a maximum rent is in effect under this title shall be maintainable by any landlord against any tenant in any court, notwithstanding the fact that the tenant has no lease or that his lease has expired, so long as the tenant continues to pay the rent to which the landlord is entitled unless—

"(1) under the law of the State in which the action or proceeding is brought the tenant is (A) violating the obligation of his tenancy (other than an obligation to pay rent higher than rent permitted under this Act or an obligation to surrender possession of such housing accommodations) or (B) is

order to effectuate the purposes of this Act, he may, by regulation or order, regulate or prohibit speculative or manipulative practices or renting or leasing practices (including practices relating to recovery of the possession) in connection with any controlled housing accommodations, which in his judgment are equivalent to or are likely to result in rent increases inconsistent with the purposes of this Act.

* * * * *

SEC. 302. Nothing in this Act or in the Housing and Rent Act of 1947, as amended, shall be construed to require any person to offer any housing accommodations for rent.

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committing a nuisance in such housing accommodations or using such housing accommodations for an immoral or illegal purpose or for other than living or dwelling purposes;

"(2) the landlord seeks in good faith to recover possession of such housing accommodations for his immediate and personal use and occupancy as housing accommodations, or for the immediate and personal use and occupancy as housing accommodations by a member or members of his immediate family, or, in the case of a landlord which is an organization exempt from taxation under section 101 (6) of the Internal Revenue Code, or the immediate and personal use and occupancy as housing accommodations of members of its staff: *Provided*, That in the case of housing accommodations in a structure or premises owned or leased by a cooperative corporation or association no action or proceeding under this paragraph or paragraph (3) to recover possession of any such housing accommodations shall be maintained unless stock in the cooperative corporation or association has been purchased by persons who are then stockholder tenants in occupancy of at least 65 per centum of the dwelling units in the structure or premises and are entitled by reason of stock ownership to proprietary leases of dwelling units in the structure or premises; but this proviso shall not apply where such corporation or association acquires or leases such structure or premises after the effective date of the Housing and Rent Act of 1948 pursuant to a contract entered into prior to such date;

"(3) the landlord has in good faith contracted in writing to sell the housing accommodations to a purchaser for the im-

2. Section 825.8(a) of the Housing Expediter's Controlled Housing Rent Regulation (12 F.R. 4331) provides as follows:

SEC. 8. *Evasion*—(a) *General.* The maximum rents and other requirements provided in this regulation shall not be evaded, either directly or indirectly, in connection with the renting or leasing or the transfer of a lease of housing accommodations, by way of absolute or conditional sale, sale with purchase money or other form of mortgage, or sale with option to repurchase or by modification of the practices relating to payment of commissions or other charges or by modification of the services furnished with housing, or by tying agreement, or otherwise.

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mediate and personal use and occupancy as housing accommodations by such purchaser;

"(4) the landlord seeks in good faith to recover possession of such housing accommodations (A) for the immediate purpose of a substantially altering or remodeling the same for continued use as housing accommodations, or for the immediate purpose of conversion into additional housing accommodations, and the altering, remodeling, or conversion cannot practically be done with the tenant in occupancy, and the landlord has obtained such approval as may be required by Federal, State, or local law for the alterations, remodeling, or any conversion planned, or (B) for the immediate purpose of demolishing such housing accommodations;

"(5) the landlord seeks in good faith to recover possession of such housing accommodations for the immediate purpose of withdrawing such housing accommodations from the rental market, and such housing accommodations shall not thereafter be offered for rent as such; or

"(6) the housing accommodations have been acquired by a State or any political subdivision thereof for the purpose of making a public improvement and are rented temporarily pending the construction of such improvement."

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